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been domiciled in the state for a year and a jury was impaneled under Code 1904, § 3274, and found in favor of plaintiff on the pleas, court did not err "in entering up judgment on the verdict of the jury before a hearing of the case upon its merits."

8. Divorce (§ 37 (22)*)—Desertion Justified Only by Showing Conduct Entitling Other to Divorce a Mensa.—Desertion by one consort of the other can only be justified by showing such conduct on the part of the deserted party as would entitle the other to a divorce a mensa, and nothing short of this will justify a willful desertion or a continuance of it.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 783.]

9. Divorce (§ 326*)—Foreign Decree Denying Divorce to Wife Res Judicata of Husband's Innocence of Cruelty.—Where wife brought action in the District of Columbia for divorce a mensa et thoro on the ground of cruelty and a decree was entered refusing the divorce on the ground that the charge of cruelty was not sustained, such decree was res judicata in another action by the husband in Virginia to obtain a divorce on the ground of desertion, wife's defense being that she did not live with her husband because of his cruelty, and husband was entitled to a decree in his favor.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 748.]

Appeal from Circuit Court of City of Alexandria.

Suit by Richard M. Towson against Nannie C. Towson. Decree for plaintiff, and defendant appeals. Affirmed.

Jas. R. & H. B. Caton, of Alexandria, for appellant.

C. E. Nicol, of Alexandria, for appellee.

UPTON & WALKER *v.* R. D. HOLLOWAY & CO.

Jan. 22, 1920.

[102 S. E. 54.]

1. Appeal and Error (§ 1002*)—Finding on Conflicting Evidence Conclusive.—Finding of jury, based on conflicting evidence, is conclusive on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 621.]

2. Trial (§ 252 (2*))—Instructions Unnecessary Where Evidence Supporting Them Insufficient to Sustain Verdict Founded Thereon.—Since the repudiation in this state of the scintilla doctrine, it is no longer necessary to give an instruction, where the evidence to support it is such that a verdict founded upon it could not be maintained.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 602.]

3. Contracts (§ 97 (2)*)—Ratification Must Be with Full Knowledge.—The rule that no man will be held bound by a waiver of his

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

rights, unless it plainly appears he had full knowledge of them and a distinct intention to waive them, applies to ratification of a voidable contract, which involves a waiver of objection to that which rendered the contract voidable.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 415.]

4. Contracts (§ 94 (5*))—Requisites of Misrepresentation to Avoid Contract Stated.—In order that a misrepresentation be sufficient to avoid a contract, it must not only have been false, but must have been believed to be true by the other party.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 466.]

5. Sales (§ 421*)—Evidence of Defendant's Knowledge of Fraud at Claimed Ratification of Contract Insufficient to Require Instruction as to Ratification.—In an action for defendant's breach of contract to deliver oats and bran, defended on the ground that plaintiffs had falsely represented to defendant that a government contract for supplying feed had been awarded them, evidence as to defendant's knowledge of the fraud at the time he wrote a letter relied on by plaintiffs as a ratification of the contract, held to amount only to a scintilla of evidence, so that it was not error to fail to instruct as to ratification by defendant.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 602.]

Error to Circuit Court of City of Newport News.

Action by Upton & Walker against R. D. Holloway, doing business under the style of R. D. Holloway & Co., with cross-demand by defendant. Judgment for defendant, and plaintiff brings error. Affirmed.

Lett & Massie, of Newport News, and *Thos. H. Willcox*, of Norfolk, for plaintiff in error.

Jno. N. Sebrell, Jr., of Norfolk, and *S. R. Buxton* and *Nelms, Colonna & McMurren*, all of Newport News, for defendant in error.

COMMONWEALTH et al. v. CARTER et al.

Jan. 22, 1920.

[102 S. E. 58.]

1. Taxation (§ 891½*)—Illegal Assessment of Inheritance Tax May Be Enjoined, There Being No Adequate Legal Remedy.—Acts 1916, c. 64, providing that no suit to restrain assessment or collection of any state or local tax shall be maintained, except where the party has no adequate remedy at law, does not preclude a suit to enjoin the assessment of inheritance taxes under Tax Bill, § 44 (Acts 1916 c.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.